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NO. 435

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

KINNEAR-WEED CORPORATION, *Petitioner*,

v.

HUMBLE OIL AND REFINING COMPANY,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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v.

HUMBLE OIL AND REFINING COMPANY,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States District Court for The Eastern District of Texas, entered in the above-entitled case on October 10, 1956, and, review of the judgment of the United States Court of Appeals for The Fifth Circuit entered Sept. 22, 1958.

CITATIONS TO OPINIONS BELOW

The United States District Court for The Eastern District of Texas made no written opinion but entered Findings of Fact and Conclusions of Law Sept. 28, 1956 (R. XVI, 4270) printed in Appendix B-4 hereto, *infra*, p. 97, and is reported in 150 F.Supp. 143. The Opinion of the United States Court of Appeals for the Fifth Circuit entered Sept. 22, 1958 (R. XVI, 4401), printed in Appendix B-1 hereto, *infra*, p. 85, reported in 259 F. 2d 398, and PER CURIAM opinion of said court entered April 30, 1959 (R. XVI, 4639), printed in Appendix B-2 hereto, *infra*, p. 94, reported in 266 F. 2d 352, and, PER CURIAM of said court entered July 2, 1959 (Supp. Tr. of R. XVI, 34), printed in Appendix B hereto, *infra*, (Not Reported).

CITATION TO CONFLICTING OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND JUDGMENT HOLDING PETITIONERS PATENT CLAIMS VALID, PATENTABLE AND DEFINING INVENTION, AND, HOLDING NO ESTOPPEL TO PREVENT RECAPTURE IN THE RE-ISSUE PATENT THE SUBJECT-MATTER INTENDED TO BE SECURED BY THE ORIGINAL APPLICATION FOR PATENT.

The opinion of the United States District Court for The District of Columbia entered Jan. 23, 1951 (R. VIII, 2006 being certified copy of said opinion of said court included in Plaintiff's Exhibit P-77) printed in Appendix C-2 hereto, *infra*, p. 140, reported in 95 F. Supp. 55, and, Findings of Fact and Conclusions of Law and Judgment of said court entered Feb. 9, 1951 (R. VIII, 2006 being certi-

fied copy of said Findings of Fact and conclusions of Law and Judgment of said court included in Plaintiff's Exhibit P-77), printed in Appendix C-1 hereto, *infra*, p. 136,

JURISDICTION

The Judgment of The United States District Court for The Eastern District of Texas was entered October 10, 1956 (R. XVI, 4323), printed in Appendix B-5 hereto, *infra*, p. 135. The Judgment of The United States Court of Appeals for The Fifth Circuit was entered Sept. 22, 1958 (R. XVI, 4410), printed in Appendix B-1 hereto, *infra*, p. 85, Rehearing denied on April 30, 1959 (R. XVI, 4639-40), printed in Appendix B-2 hereto, *infra*, p. 94, and Second Rehearing denied on July 2, 1959 (Supp. Tr. of R. XVI, 34), printed in Appendix B-3 hereto, *infra*, p. 96. The jurisdiction of this court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

I.

A Federal Constitutional Question of great public importance is present in this case pertaining to the *"standard of invention"* of Petitioner's Kinnear Patents Nos. 2,380,112 and Re-Issue thereof No. 23,416, by which both courts below "EXACTED MORE" than is required by the statute to procure and maintain a valid patent. The wrong decisions and judgments of both courts below materially affects the rights of Petitioner and the public, since both courts below used "artificial rules of interpretation" and the "wrong criteria and tests" of invention, validity, infringement and comparison of said patents in suit with